

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re: W.R. GRACE & CO., et al., Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING
FEE APPLICATION OF CASNER & EDWARDS, LLP
FOR THE SEVENTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C. ("Smith"), acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Interim Fee Application of Casner & Edwards, LLP for the Seventh Interim Period (the "Applicant").

BACKGROUND

1. Casner & Edwards, LLP ("Casner & Edwards") was retained as special litigation counsel to the Debtors. In the Application, Casner & Edwards seeks approval of fees totaling \$120,006.00 and costs totaling \$45,832.30 for its services from October 1, 2002, through December 31, 2002.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330, Issued January 30, 1996, (the "Guidelines"), as well as for

consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served on Casner & Edwards an initial report based on our review and received a response from Casner & Edwards, portions of which response are quoted herein.

DISCUSSION

General Issues

3. In our initial report, we noted that the time entries were generally adequately detailed and devoid of lumping, except for the occasional lumped entry and lack of detail by ARA and EKL. Rule 2016-2(d) of the Delaware Local Rules states “activity descriptions . . . shall be sufficiently detailed to allow the Court to determine whether all the time, or any portion thereof, is actual, reasonable, and necessary . . .” This issue has been raised in previous reports, and we have advised certain professionals to provide more detailed time entries. We again asked that Casner & Edwards continue to advise all of its professionals regarding this matter. Casner & Edwards responded as follows:

I showed ARA your comment and reminded her to avoid "lumping" whenever possible. I take responsibility for EKL's lumping and I will explain why that happened in 5, below.

We appreciate the response.

Specific Time and Expense Entries

4. In our initial report, we noted that between October 3, 2002, and December 13, 2002, ARA (\$80), RAM (\$80) and GRB (\$80) performed tasks that may not be compensable. The total time spent was 52.5 hours for \$4,200.00. See Exhibit A. Paragraph II.E. 7.of the Guidelines states, “[f]actors

relevant to a determination that the expense is proper include the following: . . . Whether the expenses appear to be in the nature of nonreimbursable overhead . . . Overhead includes word processing, proofreading, secretarial and other clerical services, . . .” We asked Casner & Edwards to review Exhibit A and explain why these tasks should be compensable. Casner & Edwards’ response is provided as Response Exhibit 1. We appreciate the depth of the response, and we concur that two errors were made when we transcribed the fee detail to construct our Exhibit A. The entry for RAM should have been for ARA, and ARA’s time for November 4, 2002, is listed twice. We regret the resulting confusion. Further, we generally accept Casner & Edwards’ arguments for compensability for most of the listed entries. However, for ARA’s time entries that reflect “prepare boxes” (2.8 hours on 10/9/02), “organize boxes” (.9 hours on 11/4/02) and “receipt of attic insulation bags”(1.0 hours on 11/19/02), we maintain that those tasks should not be compensable. We therefore recommend a reduction of \$376.00 in fees.

5. In our initial report, we noted that between October 29, 2002, and November 11, 2002, EKL (\$80) spent 54 hours for \$4,320.00 obtaining documents for RAM and MTM. The entries are provided below.

10/29/02	EKL	7.5	600.00	Obtain documents requested by RAM.
10/30/02	EKL	7.5	600.00	Obtain documents requested by RAM(3.5). Obtain documents requested by MTM(4.0)
11/4/02	EKL	7.5	600.00	Obtain documents requested by RAM.
11/5/02	EKL	5.5	440.00	Obtain documents requested by RAM.
11/6/02	EKL	7.5	600.00	Obtain documents requested by RAM.
11/7/02	EKL	7.0	560.00	Obtain documents requested by RAM.
11/8/02	EKL	7.0	560.00	Obtain documents requested by RAM.
11/11/02	EKL	4.5	360.00	Obtain documents requested by RAM.

Not only is there insufficient detail in the entries, but the time seems to have been billed in half-hour and full-hour increments. Rule 2016-2(d) of the Delaware Local Rules states “activity descriptions . . . shall be

sufficiently detailed to allow the Court to determine whether all the time, or any portion thereof, is actual, reasonable, and necessary . . .” Further, Paragraph II.D.5. of the Guidelines states, “[t]ime entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour....” We asked Casner & Edwards to provide sufficient detail regarding the cited entries so that they could be assessed for compensability. We also requested that they advise us as to the reason these time entries were not kept in tenths of an hour. Casner & Edwards replied as follows:

Grace agreed to use its work product means to obtain documents requested by the ZAI plaintiffs. That is the work EKL was doing on 10/30 at the request of MTM (Matthew Murphy). The rest of EKL's time on 10/29 through 11/11 that is questioned was work done at my request. I mentioned earlier that plaintiffs had requested information concerning 19 present and former Grace employees. An in-house Grace counsel intended to interview some of these people, particularly several about whom he did not have much knowledge or information. He asked me to put together a collection of documents for those people to help him prepare for the interviews. Using work product means, lists of documents referencing these individuals were prepared. I reviewed the lists and indicated documents that should be searched for and obtained for in-house counsel's use. EKL did that work at my request, as indicated, on October 29-November 11. Because I wanted to protect the confidentiality of the use of work product means, I had EKL describe his work in the general way that he did.

Both EKL and GRB are temporary paralegals hired by this firm to work on the Grace project. They make it a practice, in general, to work to the clock and they record the time they actually work.

We appreciate the response and have no objection to these fees.

CONCLUSION

6. Thus, we recommend approval of fees totaling \$119,630.00 (\$120,006.00 minus \$376.00)

and costs totaling \$45,832.30 for Casner & Edwards' services from October 1, 2002, through December 31, 2002.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 

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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 15th day of April, 2003.


Warren H. Smith

SERVICE LIST

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Exhibit A

10/17/02	ARAPer RAM's request, review Grace directories for any reference to two people (1.5).	1.9	152.00
10/18/02	RAMQuality control original documents re:science trial production(2.9).	5.2	416.00
10/03/02	ARA	Quality control copy sets of documents received from copy service(2.6);...	3.6	288.00
10/04/02	ARA	Quality control and organize original documents received from copy service after production (4.8);...	5.5	440.00
10/09/02	ARA	Prepare eleven boxes of documents for shipment to plaintiffs (2.8);.....contact Federal Express re:same (.1).	4.4	352.00
10/22/02	ARA	Quality control and organize documents after production.	2.0	160.00
10/28/02	ARA	Quality control and organize originals that plaintiffs reviewed during production(2.4).	3.6	288.00
10/29/02	ARA	Quality control and organize documents after production (5.1).	6.0	480.00
11/04/02	ARA	Receipt of 9 boxes of documents from Cambridge to be reviewed	5.2	416.00
11/4/02	ARAorganize boxes of unscannable material in one location (.9).....Quality control Sales Outside U.S. Documents(1.0).	5.2	416.00
11/08/02	ARA	Quality control production set documents.	3.5	280.00
11/19/02	ARA	Quality control documents after production to ZAI plaintiffs(2.7). Receipt of attic insulation bags for storage at Winthrop Square (1.0).	3.7	296.00
12/12/02	GRB	Quality control list of approximately 1300 boxes of documents at Cambridge.	8.0	640.00
12/13/02	GRB	Quality control list of approximately 1300 boxes of documents at Cambridge.	6.0	480.00
12/18/02	ARA	... Quality control documents (.3)	1.3	104.00

Response Exhibit 1

Please note that you write that a total of 52.5 hours costing \$4,200 was spent on "... tasks that may not be compensable." I can not determine from Exhibit A how the amount of time was calculated. For example, the amount of time indicated in the body of the description for the daily entries or partial entries (which I assume are the ones being questioned) do not match up with the hours listed. The listed hours are the total of all the work the professional performed that day and not solely the questioned work. Second, total hours for ARA on 11/4/02 are listed twice. Therefore, the explanations appearing below are for those portions of each day's work that is described in Exhibit A. If you need additional information on any particular day, please let me know.

I am RAM and my hourly rate in October 2002 was \$210 and not \$80. I did not have any entry for 2.9 hours on October 18, but ARA did so I will assume your inquiry has to do with her time on that date. ARA is Angela R. Anderson who is the resident custodian at Grace's Winthrop Square document repository and the day to day on-site supervisor. Among her many responsibilities (since she is the only full time paralegal at this firm who is still working on Grace's document related matters) are to prepare for the production of documents to plaintiffs, monitor productions, arrange for the copying of documents requested by plaintiffs' counsel, insure the quality of the copying done by the outside copying service, inventory the original documents being returned and then replace the original documents that were copied to their correct location within the hundreds of boxes of documents at the repository.

I am conscious of the Guidelines that not all work is compensable or reimbursable. I review all of the time charges of the people who are working on Grace's matters and reduce time when I believe it should not be charged to the client. For example, on the days that some of ARA's time is being questioned, I made the following reductions in her time before submitting the fee applications for approval: 10/3 - 1.0 hours; 10/4 - 1.0 hour; 10/9 - 0.6 hour; 10/28 - 0.6 hour; 11/4 - 1.10 hours and amounts less than 0.5 hour on several other days.

In October 2002, plaintiffs in the ZAI Science Trial served discovery requests on Grace. Among the requests was one that

asked for the last known address, phone number, status and other information concerning 19 former and present Grace employees, some of whom are dead. For those who were not well known to Grace counsel, efforts were made to find out where and when they worked for Grace. One part of that effort was to review Grace phone directories from years ago. That is what ARA was doing on 10/17 at my request.

There was a production of documents to the plaintiffs in the ZAI Science trial that lasted for about two weeks in September. Subsequently the documents that the plaintiffs tagged for copying were sent to the copy service. After being copied, the originals were returned to Winthrop Square and ARA checked on the quality and completeness of the copying, the condition and completeness of the original documents, and then returned the original documents to the folders and the folders to the boxes from which the documents were obtained. The after copying work, just described, is the "Quality Control..." work done by ARA on 10/3, 4, 18,19, 22, 28 and 29, and listed on Exhibit A.

On 10/9, ARA quality controlled, organized, boxed and labelled the boxes of documents that had been copied at plaintiffs' requests for shipment to plaintiffs' counsel via Federal Express.

As mentioned above, ARA's time on 11/4 is listed twice. On 11/1, she and an in-house counsel were reviewing documents at Grace, Cambridge. It appeared that some of the documents may not have been included in earlier comprehensive reviews so arrangements were made to ship them to the Winthrop Square repository for a detailed review. When they arrived at Winthrop Square on 11/4, ARA compared them against notes she had made in Cambridge to insure that all were shipped (Receipt of 9 boxes ...(.5)), then she organized them to be reviewed (prepare documents ... (1.0)) and instructed a temporary paralegal in what to do (conference with paralegal ... (.5)).

Also on 11/4, she was told by attorney Matthew Murphy (MTM) that boxes of unscannable material would be sent to Winthrop Square from Boulder, Colorado for storage and a possible later review by plaintiffs in the ZAI Science trial. The vast majority of documents that were reviewed for the EPA and Chapter 11 cases were scanned and produced to plaintiffs on disks. Documents and other material that were too large, fragile, bulky or whatever to be scanned were called "unscannable material." At MTM's instructions, ARA, on this day, organized other unscannable material in Winthrop Square into one location so that the material coming from Boulder could be stored in the same location and be accessible in one

place for any later review by plaintiffs' attorneys. "Sales Outside U.S." is the name given to a subset of Grace documents that have been made available to plaintiffs for many years. At one point, most of these documents were sent to Boulder, Colorado in connection with the EPA cases. Subsequently, they were returned to Winthrop Square and ARA spent one hour performing the same quality control functions, described above, as to some of these documents.

On 11/8, ARA recorded 3.5 hours as "Quality control production set documents." This is different from the quality control work described above. Whenever she is not involved in performing other work, ARA has been told to spot check the hundreds of boxes that contain the documents that have been produced to plaintiffs for almost 20 years. As you would imagine, because of all the productions, copying and handling of documents over these years, documents are not always where they are supposed to be. ARA periodically checks the boxes and makes sure the documents are in order. On this particular day, she did this type of work because she and the temporary paralegals who were looking for original documents concerning the former employees, mentioned above, noticed that some of the production set documents were out of sequence.

On 11/19, ARA logged in bags of ZAI that were received at Winthrop Square and prepared them to be stored at that location. She recorded 1.0 hours for this work.

On 12/18, ARA assisted the two temporary paralegals in searching for and obtaining documents requested by ZAI plaintiffs' counsel. A brief amount of ARA's time on that day (.3) was spent "quality controlling" some of the documents as she prepared them to be sent to the copy service.

As part of the wrap up of the document review, inventories were prepared of the many sets and subsets of Grace's documents that this firm is responsible for maintaining. One such inventory was prepared for documents stored in the basement of a building in Cambridge, Massachusetts that used to be the headquarters of Grace's Construction Products Division. On 12/12 and 12/13, GRB reviewed this inventory for accuracy and to put it in final form.